IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 2375 of 2007(G)

AGAINST THE ORDER IN IA.895/04 IN
OS.64/2004 of MUNI-MAGI.COURT,PATTAMBI

.....

PETITIONER:

GOVINDANKUTTY MENON, AGED 65 YEARS,
S/O.KOLLATH NANI AMMA, KUMARANELLUR AMSOM,
VELLALUR DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM
SRI.T.R.RAVI

RESPONDENTS:

ABDUL NAZEER, AGED 39 YEARS,
S/O.KARIMBANACKAL KUNHUTTY HAJI,
KUMARANELLUR AMSOM AND DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/01/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.2375 OF 2007

Dated 19th January 2007

J U D G M E N T

Petitioner is defendant and respondent the plaintiff in O.S.64/04 on the file of Munsiff court, Pattambi. Suit was instituted for recovery of possession contending that petitioner is a licensee. Petitioner contended that he is not a licensee but a tenant. Petitioner has also raised a contention that he is not in possession of the building shown in the plaint but another building in the same complex. Petitioner filed I.A.895/2006 for appointment of a commission which was dismissed under Ext.P4 order. This petition is filed under Article 227 of Constitution of India challenging that order.

2. Learned counsel appearing for petitioner was heard.

3. Argument of learned counsel appearing for petitioner was that appointment of commission was necessary in view of the case of respondent that petitioner is in possession of the building shown in

the plaint and case of petitioner is that he is in possession of a different building in the same complex. It was also argued that as respondent contended that he bonafide needs the building for bonafide need, points sought to be noted are necessary for deciding that question. Learned counsel pointed out that under Ext.P4 order learned Munsiff entered a finding that petitioner is a licensee and not a tenant and therefore Ext.P4 order is to be quashed.

4. There is force in the submission made by learned counsel. Question whether petitioner is a licensee or a tenant and arrangement was lease or license is a matter to be decided by learned Munsiff on the evidence. But by an inadvertent error Ext.P4 order shows that petitioner is stated as a licensee and later it was stated that question whether petitioner is a tenant is to be decided in the suit. In the nature of the suit, appointment of a commission is not necessary. I do not find any reason to interfere with Ext.P4 order. But it is made clear that observation in Ext.P4 order with regard to the status of the petitioner as a licensee is to be ignored, while deciding the question whether petitioner is a tenant or licensee and that too of the building shown in the

plaint or written statement by learned Munsiff to decide the question on the evidence and untrammelled by whatever is stated in Ext.P4 order.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.